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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke
13 Probation Against,

Case No. 2004-131

14 **MARJORIE CAROL BALLARD**
15 **814 East 97th St., Apt. 4**
16 **Los Angeles, CA 90002**

OAH No. 2008050672

17 **Registered Nurse License No. 270079**
18 **Public Health Nurse Certificate No. 25553**

PETITION TO REVOKE PROBATION

19 Respondent.

20 Complainant alleges:

21 **PARTIES**

22 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Petition to Revoke
23 Probation solely in her official capacity as the Executive Officer of the Board of Registered
24 Nursing, Department of Consumer Affairs.

25 2. On or about August 31, 1976, the Board of Registered Nursing issued Registered
26 Nurse License Number 270079 to Marjorie Carol Ballard ("Respondent"). The Registered Nurse
27 License was in full force and effect at all times relevant to the charges brought herein and will
28 expire on October 31, 2011, unless renewed.

3. On or about November 18, 1977, the Board of Registered Nursing issued Public
Health Nurse Certificate No. 25553 to Respondent. The Public Health Nurse Certificate was in

1 full force and effect at all times relevant to the charges brought herein and will expire on October
2 31, 2011, unless renewed.

3 4. In a disciplinary action entitled, *In the Matter of Accusation Against Marjorie Carol*
4 *Ballard*, Case No. 2004-131, the Board of Registered Nursing, issued a decision, effective August
5 22, 2008, in which Respondent's Registered Nurse License was revoked. However, the
6 revocation was stayed and Respondent's Registered Nurse License was placed on probation for a
7 period of three (3) years with certain terms and conditions. A copy of that decision is attached as
8 Exhibit A and is incorporated by reference.

9 JURISDICTION

10 5. This Petition to Revoke Probation is brought before the Board of Registered Nursing
11 ("Board"), Department of Consumer Affairs, under the authority of the following laws. All
12 section references are to the Business and Professions Code unless otherwise indicated.

13 STATUTORY PROVISIONS

14 6. Section 2750 of the Code provides, in pertinent part, that the Board may discipline
15 any licensee, including a licensee holding a temporary or an inactive license, for any reason
16 provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

17 7. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
18 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
19 licensee or to render a decision imposing discipline on the license. Under Code section 2811,
20 subdivision (b), the Board may renew an expired license at any time within eight years after the
21 expiration.

22 RULES AND REGULATIONS

23 8. California Code of Regulations, Title 16, Section 1491, provides in pertinent part,
24 "An applicant for a Public Health Nurse Certificate shall have a license, in active status, to
25 practice as a registered nurse in California and shall have met the education and clinical
26 experience requirements as follows:..."

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1 14. Respondent's probation is subject to revocation because she failed to comply with
2 Probation Condition 5, referenced above. The facts and circumstances regarding this violation
3 are as follows:

4 a. Respondent failed to submit quarterly probation reports for the reporting period
5 of January 1, 2011 through March 31, 2011. This report was due to be submitted to the Board by
6 April 10, 2011.

7 **SECOND CAUSE TO REVOKE PROBATION**

8 **(Failed to Function as a Registered Nurse)**

9 15. At all times after the effective date of Respondent's probation, Condition 6 stated:

10 "FUNCTION AS A REGISTERED NURSE - Petitioner, during the period
11 of probation, shall engage in the practice of registered nursing in California for a
12 minimum of 24 hours per week for 6 consecutive months or as determined by the
Board.

13 For purposes of compliance with the section, "engage in the practice of
14 registered nursing" may include, when approved by the Board, volunteer work as a
registered nurse, or work in any non-direct patient care position that requires
licensure as a registered nurse.

15 The Board may require that advanced practice nurses engage in advanced
16 practice nursing for a minimum of 24 hours per week for 6 consecutive months or
as determined by the Board.

17 If petitioner has not complied with this condition during the probationary
18 term, and petitioner has presented sufficient documentation of her good faith
19 efforts to comply with this condition, and if no other conditions have been
20 violated, the Board, in its discretion, may grant an extension of petitioner's
probation period up to one year without further hearing in order to comply with
this condition. During the one year extension, all original conditions of probation
shall apply."

21 16. Respondent's probation is subject to revocation because she failed to comply with
22 Probation Condition 6, referenced above. The facts and circumstances regarding this violation
23 are as follows:

24 a. Respondent failed to engage in the practice of registered nursing in California
25 for a minimum of 24 hours per week for 6 consecutive months.

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1 **FOURTH CAUSE TO REVOKE PROBATION**

2 **(Failed to Submit to Random Fluid Testing)**

3 19. At all times after the effective date of Respondent's probation, Condition 16 stated:

4 "SUBMIT TO TESTS AND SAMPLES - Petitioner, at her
5 expense, shall participate in a random, biological fluid testing or a drug screening
6 program which the Board approves. The length of time and frequency will be
7 subject to approval by the Board. Petitioner is responsible for keeping the Board
8 informed of petitioner's current telephone number at all times. Petitioner shall
9 also ensure that messages may be left at the telephone number when she is not
10 available and ensure that reports are submitted directly by the testing agency to the
11 Board, as directed. Any confirmed positive finding shall be reported immediately
12 to the Board by the program and Respondent shall be considered in violation of
13 probation.

14 In addition, petitioner, at any time during the period of probation, shall fully
15 cooperate with the Board or any of its representatives, and shall, when requested,
16 submit to such tests and samples as the Board or its representatives may require for
17 the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled
18 substances.

19 If petitioner has a positive drug screen for any substance not legally
20 authorized and not reported to the coordinating physician, nurse practitioner, or
21 physician assistant, and the Board files a petition to revoke probation or an
22 accusation, the Board may suspend petitioner from practice pending the final
23 decision on the petition to revoke probation or the accusation. This period of
24 suspension will not apply to the reduction of this probationary time period.

25 If petitioner fails to participate in a random, biological fluid testing or drug
26 screening program within the specified time frame, petitioner shall immediately
27 cease practice and shall not resume practice until notified by the Board. After
28 taking into account documented evidence of mitigation, if the Board files a petition
to revoke probation or an accusation, the Board may suspend petitioner from
practice pending the final decision on the petition to revoke probation or the
accusation. This period of suspension will not apply to the reduction of this
probationary time period."

21 20. Respondent's probation is subject to revocation because she failed to comply with
22 Probation Condition 16, referenced above. The facts and circumstances regarding this violation
23 are as follows:

24 a. Respondent failed to log in or call in to FirstLab for random fluid testing on the
25 following dates: February 19, 2010, February 23, 2010, February 28, 2010, April 27, 2010, June
26 13, 2010, July 1, 2011, and July 10, 2011.

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1 **FIFTH CAUSE TO REVOKE PROBATION**

2 **(Failed to Participate in On-Going Counseling)**

3 21. At all times after the effective date of Respondent's probation, Condition 18 stated:

4 "THERAPY OR COUNSELING PROGRAM - petitioner, at her expense,
5 shall participate in an on-going counseling program until such time as the Board
6 releases her from this requirement and only upon the recommendation of the
7 counselor. Written progress reports from the counselor will be required at various
8 intervals."

9 22. Respondent's probation is subject to revocation because she failed to comply with
10 Probation Condition 18, referenced above. The facts and circumstances regarding this violation
11 are as follows:

12 a. Respondent failed to submit ongoing counseling reports for the following
13 reporting periods: January 7, 2011 and April 7, 2011.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Board of Registered Nursing issue a decision:

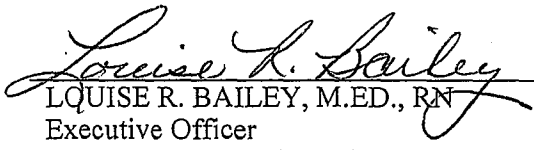
17 1. Revoking the probation that was granted by the Board of Registered Nursing in Case
18 No. 2004-131 and imposing the disciplinary order that was stayed thereby revoking Registered
19 Nurse License No. 270079 issued to Marjorie Carol Ballard;

20 2. Revoking or suspending Registered Nurse License No. 270079, issued to Marjorie
21 Carol Ballard;

22 3. Revoking or suspending Public Health Nurse Certificate No. 25553 issued to
23 Marjorie Carol Ballard;

24 3. Taking such other and further action as deemed necessary and proper.

25 DATED: _____

26 
27 LOUISE R. BAILEY, M.ED., RN
28 Executive Officer
 Board of Registered Nursing
 Department of Consumer Affairs
 State of California
 Complainant

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Exhibit A

Decision and Order

Board of Registered Nursing Case No. 2004-131

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of:

MARJORIE C. BALLARD

Registered Nurse License No. 270079

Petitioner.

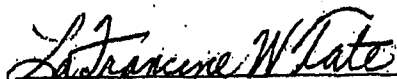
OAH No. 2008050672

DECISION

The attached Decision of the Board of Registered Nursing is hereby adopted by the Board as its Decision in the above-entitled matter.

This Decision shall become effective on August 22, 2008.

IT IS SO ORDERED this 24th day of July 2008.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of Petition for Reinstatement
of:

MARJORIE C. BALLARD,

Petitioner.

OAH No. 2008050672

DECISION

This matter was heard by a quorum of the Board of Registered Nursing (Board) on June 12, 2008, in Burlingame, California. The Board members participating in the hearing and decision were LaFrancine Tate, Public Member, President; Susanne Phillips, MSN, RN, APRN-BC, FNP, Vice President; Andrea Dutton, Public Member; Elizabeth O. Dietz, Ed.D., RN, CS-NP; Nancy Beecham, RNC, BS; and Janice Glaab, Public Member. Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, presided.

Hannah H. Rose, Deputy Attorney General, represented the Department of Justice, State of California.

Petitioner Marjorie C. Ballard was present and represented herself.

The matter was submitted on June 12, 2008.

FACTUAL FINDINGS

1. Marjorie C. Ballard (petitioner) was issued RN License number 270079 on August 31, 1976. On November 18, 1977, the Board issued Public Health Nursing Certificate number 25553 to petitioner. Both the license and the certificate expired on October 31, 2003. Her license and certificate were revoked effective March 11, 2005, for unprofessional conduct and incompetence when on duty as a registered nurse she failed to document and failed to administer medication to patients under her care. She also acted in an irrational manner during the shift causing her supervisor to suspect that she was under the influence of illegal drugs. She was sent home before her shift was concluded. She tested positive for cocaine in a drug screening test that was administered on December 11, 2002.

2. Petitioner has a drug abuse problem. She has been clean and sober since July 10, 2005. She provided a certificate of completion from her residency at Set Free Women's Ranch where she resided for one year and five months. When she left that program in November 2005 she became a resident of Hope Again Lighthouse Program where is still

resides. She presented a letter from her case manager and her certified drug and alcohol counselor at Hope Again. Both letters commend petitioner's progress and commitment to sobriety. Petitioner also provided drug test records from 2006 through January 2008 showing her tests have all been negative. Petitioner also provided a letter from her psychiatrist who is involved in petitioner's individual therapy and medications. Her doctor reports that she is compliant and cooperative with all of her treatment requirements. Petitioner also submitted a letter from her Senior Pastor commending her work in the community and with young people in the church since April 2007.

3. Petitioner provided her certificate for 30 hours of continuing education for a class in Psychiatric Nursing Interventions in June 2007.

4. Petitioner has been attending Los Angeles City College nearly full time since the summer of 2006. She is working to complete a Drug/Alcohol Studies Certificate very soon.

5. The Board finds that petitioner has demonstrated sufficient rehabilitation to allow reinstatement of her revoked license upon terms and conditions of probation as set forth below.

LEGAL CONCLUSIONS

1. Government Code section 11522 allows petitioner to petition for reinstatement of her license. Business and Professions Code section 2760.1 also allows petitioner to petition for reinstatement.

2. California Code of Regulations, title 16, section 1445, sets forth the criteria to be used in evaluating rehabilitation. Petitioner has demonstrated sufficient rehabilitation to warrant reinstatement of her license upon terms and conditions.

ORDER

The Petition of Marjorie C. Ballard for reinstatement of her registered nursing license is hereby granted. That license shall be immediately revoked, the order of revocation is stayed and petitioner's license shall be placed on probation for a period of three years with the following terms and conditions:

- (1) OBEY ALL LAWS - Petitioner shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the petitioner to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, petitioner shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

CRIMINAL COURT ORDERS: If petitioner is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

- (2) COMPLY WITH THE BOARD'S PROBATION PROGRAM - Petitioner shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the petitioner's compliance with the Board's Probation Program. Petitioner shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, petitioner's license shall be fully restored.

- (3) REPORT IN PERSON - Petitioner, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.
- 4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Petitioner's probation is tolled, if and when she resides outside of California. The petitioner must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Petitioner shall provide a list of all states and territories where she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Petitioner shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Petitioner shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

- (5) SUBMIT WRITTEN REPORTS - Petitioner, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to petitioner's compliance with all the conditions of the Board's Probation Program. Petitioner shall immediately execute all release of information forms as may be required by the Board or its representatives.

Petitioner shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

- (6) FUNCTION AS A REGISTERED NURSE - Petitioner, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If petitioner has not complied with this condition during the probationary term, and the petitioner has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the petitioner's probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation shall apply.

- (7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS - Petitioner shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Petitioner shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Petitioner shall provide a copy of this decision to her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, petitioner shall notify the Board in writing within seventy-two (72) hours after he or she obtains any nursing or other health care related employment. Petitioner shall notify the Board in writing within seventy-two (72) hours after she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

- (8) SUPERVISION - Petitioner shall obtain prior approval from the Board regarding petitioner's level of supervision and/or collaboration before

commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Petitioner shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Petitioner's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
 - (b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours petitioner works.
 - (c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with petitioner at least twice during each shift worked.
 - (d) Home Health Care - If petitioner is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with petitioner as required by the Board each work day. Petitioner shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the petitioner with or without petitioner present.
- (9) EMPLOYMENT LIMITATIONS - Petitioner shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Petitioner shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Petitioner shall not work in any other registered nursing occupation where home visits are required.

Petitioner shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict petitioner from supervising

licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Petitioner shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Petitioner shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the petitioner is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

- (10) COMPLETE A NURSING COURSE(S) - Petitioner, at her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term. Petitioner shall obtain prior approval from the Board before enrolling in the course(s). Petitioner shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to petitioner after photocopying them for its records.

- (11) VIOLATION OF PROBATION - If petitioner violates the conditions of her probation, the Board after giving petitioner notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of the petitioner's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against petitioner's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the petitioner's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

- (12) LICENSE SURRENDER - During petitioner's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, petitioner may surrender her license to the Board. The Board reserves the right to evaluate petitioner's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, petitioner will no longer be subject to the conditions of probation.

Surrender of petitioner's license shall be considered a disciplinary action and shall become a part of petitioner's license history with the Board. A registered

nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- 1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- 2) One year for a license surrendered for a mental or physical illness.

- (13) PHYSICAL EXAMINATION - Within 45 days of the effective date of this decision, petitioner, at her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of petitioner's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the petitioner with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If petitioner is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and petitioner by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Petitioner shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, petitioner shall not engage in any practice for which a license issued by the Board is required until the Board has notified petitioner that a medical determination permits petitioner to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the petitioner fails to have the above assessment submitted to the Board within the 45-day requirement, petitioner shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the petitioner to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

- (14) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE - Petitioner, at her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If

petitioner has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, petitioner, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider petitioner in violation of probation.

Based on Board recommendation, each week petitioner shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Petitioner shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Petitioner shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

- (15) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS -Petitioner shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Petitioner shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the petitioner's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Petitioner shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of petitioner's history of substance abuse and will coordinate and monitor any prescriptions for petitioner for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis petitioner's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

- (16) SUBMIT TO TESTS AND SAMPLES - Petitioner, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Petitioner is responsible for keeping the Board

informed of petitioner's current telephone number at all times. Petitioner shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the petitioner shall be considered in violation of probation.

In addition, petitioner, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If petitioner has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend petitioner from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If petitioner fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, petitioner shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend petitioner from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

- (17) MENTAL HEALTH EXAMINATION - Petitioner shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of petitioner. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the petitioner.

If petitioner is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and petitioner by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Petitioner shall immediately cease practice and may not

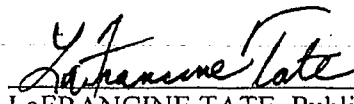
resume practice until notified by the Board. During this period of suspension, petitioner shall not engage in any practice for which a license issued by the Board is required, until the Board has notified petitioner that a mental health determination permits petitioner to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If petitioner fails to have the above assessment submitted to the Board within the 45-day requirement, petitioner shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the petitioner to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

- (18) THERAPY OR COUNSELING PROGRAM - Petitioner, at her expense, shall participate in an on-going counseling program until such time as the Board releases her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.
- (19) COST RECOVERY - Petitioner shall pay to the Board costs associated with its investigation and enforcement¹ pursuant to Business and Professions Code section 125.3 in the amount set forth by the Board. Petitioner shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If petitioner has not complied with this condition during the probationary term, and petitioner has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the petitioner's probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation will apply.

DATED: July 24, 2008


LaFRANCINE TATE, Public Member
President, California Board of Registered Nursing

¹ No specific amount was stated at the hearing. The Board shall determine if cost recovery is owed by petitioner and the actual amount owed.

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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2004-131

13 **MARJORIE CAROL BALLARD**
1247 W. 28th Street
San Bernardino, CA 92405

**DEFAULT DECISION
AND ORDER**

14 Registered Nursing License No. 270079
Public Health Nursing Certificate No. 25553

[Gov. Code, §11520]

15 Respondent.
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18 **FINDINGS OF FACT**

19 1. On or about December 8, 2003, Complainant Ruth Ann Terry, M.P.H.,
20 R.N., in her official capacity as the Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs, filed Accusation No. 2004-131 against Respondent Marjorie
22 Carol Ballard before the Board of Registered Nursing.

23 2. On or about August 31, 1976, the Board of Registered Nursing issued
24 Registered Nursing License No. 270079 to Respondent Marjorie Carol Ballard. The Registered
25 Nursing License No. 270079 expired on October 31, 2003, and has not been renewed.

26 3. On or about November 18, 1977, the Board of Registered Nursing issued
27 Public Health Nursing Certificate No. 25553 to Respondent Marjorie Carol Ballard. The Public
28 Health Nursing Certificate No. 25553 expired on October 31, 2003, and has not been renewed.

1 4. On or about August 31, 2004, Tracey To, an employee of the
2 Office of the Attorney General, served by Certified and First Class Mail a copy of the Accusation
3 No. 2004-131, Statement to Respondent, Notice of Defense, Request for Discovery, and
4 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record
5 with the Board, and last known address of 1247 W. 28th Street, San Bernardino, CA 92405. A
6 copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

7 5. Service of the Accusation was effective as a matter of law under the
8 provisions of Government Code section 11505, subdivision (c), in that the documents were
9 served on Respondent by certified mail and first class mail.

10 6. Government Code section 11506 states, in pertinent part:

11 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
12 files a notice of defense, and the notice shall be deemed a specific denial of all parts of
13 the accusation not expressly admitted. Failure to file a notice of defense shall constitute a
14 waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless
15 grant a hearing."

16 7. Respondent failed to file a Notice of Defense within 15 days after service
17 upon her of the Accusation, and therefore waived her right to a hearing on the merits of
18 Accusation No. 2004-131.

19 8. California Government Code section 11520 states, in pertinent part:

20 "(a) If the respondent either fails to file a notice of defense or to appear at the
21 hearing, the agency may take action based upon the respondent's express admissions or
22 upon other evidence and affidavits may be used as evidence without any notice to
23 respondent."

24 9. Pursuant to its authority under Government Code section 11520, the Board
25 finds Respondent is in default. The Board will take action without further hearing and, based on
26 Respondent's express admissions by way of default and the evidence before it, contained in
27 exhibit A finds that the allegations in Accusation No. 2004-131 to be true.

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10. The total costs for investigation and enforcement are \$3,205.00 as of September 23, 2004.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Marjorie Carol Ballard has subjected her Registered Nursing License No. 270079, to discipline.

2. Based on the foregoing findings of fact, Respondent Marjorie Carol Ballard has subjected her Public Health Nursing Certificate No. 25553 to discipline.

3. A copy of the Accusation is attached.

4. The agency has jurisdiction to adjudicate this case by default.

5. The Board of Registered Nursing is authorized to revoke Respondent's Registered Nursing License and Public Health Nursing Certificate based upon the following violations alleged in the Accusation:

a. Business and Professions Code section 2761, subdivision (a) - Respondent acted in an unprofessional manner in that she failed to complete documentation and administer medications to patients under her care. Moreover, Respondent's employer suspected that she was under the influence of illegal drugs during her shift.

b. Business and Professions Code section 2761, subdivision (a)(1) - Respondent committed acts of incompetence while performing nursing duties on November 13, 2002 at Corona Regional Medical Center.

c. Business and Professions Code section 2762, subdivision (b) - A drug screening test administered to Respondent on December 11, 2002 tested positive for cocaine use.

d. Business and Professions Code section 2761 subdivision (d) in that Respondent violated provisions of the Nursing Practice Act as described in paragraph 5 a-c above.

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ORDER

IT IS ORDERED that Registered Nursing License No. 270079, issued to Respondent Marjorie Carol Ballard, is revoked.

IT IS FURTHER ORDERED that Public Health Nursing Certificate No. 25553, issued to Respondent Marjorie Carol Ballard, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on March 11, 2005.

It is so ORDERED February 9, 2005

Sandra R. Erickson

FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

Attachment:

Exhibit A: Accusation No.2004-131
DOJ docket number:03579110-LA2003600908
/els
60026070.wpd

Exhibit A
Accusation No. 2004-131

1 BILL LOCKYER, Attorney General
of the State of California
2 GILLIAN E. FRIEDMAN, State Bar No. 169207
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-2564
5 Facsimile: (213) 897-2804
6 Attorneys for Complainant
7
8

9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2004-131

12 MARJORIE CAROL BALLARD
1247 W. 28th Street
13 San Bernardino, CA 92405

ACCUSATION

14 Registered Nurse License No. 270079
Public Health Nurse Certificate No. 25553

15 Respondent.
16

17 Complainant alleges:

18 **PARTIES**

19 1. ... Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs.

22 2. On or about August 31, 1976, the Board of Registered Nursing issued
23 Registered Nurse License No. 270079 to Marjorie Carol Ballard (Respondent). The license was
24 in full force and effect at all times relevant to the charges brought herein and will expire on
25 October 31, 2003, unless renewed.

26 3. On or about November 18, 1977, the Board of Registered Nursing issued
27 Public Health Nurse Certificate No. 25553 to Respondent. The certificate was in full force and

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1 effect at all times relevant to the charges brought herein and will expire on October 31, 2003,
2 unless renewed.

3 JURISDICTION

4 4. This Accusation is brought before the Board of Registered Nursing
5 (Board), Department of Consumer Affairs, under the authority of the following laws.

6 5. Business and Professions Code section 2750 states, in pertinent part:
7 "Every certificate holder or licensee, including licensees holding temporary
8 licenses, or licensees holding licenses placed in an inactive status, may be disciplined as provided
9 in this article [article 3 (commencing with section 2750)]. As used in this article, 'license'
10 includes certificate, registration, or any other authorization to engage in the practice regulated by
11 this chapter [chapter 6 (commencing with section 2700)]."

12 6. Business and Professions Code section 2761 states, in pertinent part:
13 "The board may take disciplinary action against a certified or licensed nurse or
14 deny an application for a certificate or license for any of the following:

15 "(a) Unprofessional conduct, which includes, but is not limited to, the following:
16 "(1) Incompetence, or gross negligence in carrying out usual certified or licensed
17 nursing functions.

18

19 - - - - - "(d) Violating or attempting to violate, directly or indirectly, or assisting in or
20 abetting the violating of, or conspiring to violate any provision or term of this chapter or
21 regulations adopted pursuant to it."

22 7. Section 2764 states:

23 "The lapsing or suspension of a license by operation of law or by order or decision
24 of the board or a court of law, or the voluntary suspension of a license by a licentiate shall not
25 deprive the board of jurisdiction to proceed with any investigation of or disciplinary proceeding
26 against such license, or to render a decision suspending or revoking such license."

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8. **Business and Professions Code section 2762 states, in pertinent part:**

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the following:

• • • •

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license."

9. Business and Professions Code section 125.3, subdivision (a), states, in pertinent part:

"Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

10. Respondent is subject to disciplinary action pursuant to Business and Professions Code section 2750 for unprofessional conduct as defined in section 2761(a), in that while on duty as a registry nurse through Nursefinders, on November 13, 2002 at Corona Regional Medical Center located in Corona, California, Respondent acted in an unprofessional manner when she failed to complete nursing documentation and failed to administer medications to a patient under her care. Respondent also acted in an irrational manner during her shift, causing Nursefinders to suspect that Respondent was under the influence of illegal drugs. Such behavior included acting edgy, giggling inappropriately, being unable to stand still and exhibiting

1 red eyes, blinking and sniffing. Respondent was asked to go home before her shift concluded.

2 **SECOND CAUSE FOR DISCIPLINE**

3 (Incompetence)

4 11. Respondent is subject to disciplinary action pursuant to Business and
5 Professions Code sections 2750 and 2761(a)(1) in that she committed acts of incompetence while
6 performing her nursing duties on November 13, 2002 at Corona Regional Medical Center, as
7 described above in paragraph 10.

8 **THIRD CAUSE FOR DISCIPLINE**

9 (Substance Abuse)

10 12. Respondent is subject to disciplinary action pursuant to Business and
11 Professions Code sections 2750 and 2762(b) in that on or about December 13, 2002, the results
12 from a drug screening test given to Respondent on December 11, 2002, showed that Respondent
13 tested positive for cocaine use.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 (Violation of the Nursing Practice Act)

16 13. Respondent is subject to disciplinary action pursuant to Business and
17 Professions Code section 2761(d) for unprofessional conduct in that Respondent violated or
18 attempted to violate, directly or indirectly the provisions of the Nursing Practice Act as set forth
19 above in paragraphs 10 through 12.

20 **PRAYER**

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein
22 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

23 1. Revoking or suspending Registered Nurse License No. 270079, issued to
24 Marjorie Carol Ballard;

25 2. Revoking or suspending Public Health Nurse Certificate No. 25553, issued
26 to Marjorie Carol Ballard.

27 3. Ordering Marjorie Carol Ballard to pay the Board of Registered Nursing
28 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and

1 Professions Code section 125.3;

2 4. Taking such other and further action as deemed necessary and proper.

3 DATED: 12/8/03

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RUTH ANN TERRY, M.P.H., R.N.

Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California

Complainant

03579110-LA2003600908

lbf/rse rev 10/29/03

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